

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

MATTHEW MCSHANE,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:21-1396
	:	
v.	:	(MANNION, D.J.)
	:	
AGENTS OF INTERNATIONAL MONETARY FUND, <i>et al.</i>,	:	(CARLSON, M.J.)
Defendants	:	

ORDER

Pending before the court is the April 11, 2022 report of United States Magistrate Judge Martin C. Carlson, which recommends that the August 11, 2021 original complaint of the *pro se* plaintiff Matthew McShane, (Doc. 1), be dismissed since he has now filed an amended complaint, (Doc. 21), and since he has failed to timely serve the remaining defendants with his original pleading as directed by the court. (Doc. 24). Thus, Judge Carlson recommends that McShane's original complaint be dismissed under [Federal Rule of Civil Procedure 4\(m\)](#) since "[d]espite th[e] [court's] notice and warning, the plaintiff has neither served the complaint, nor sought a further extension of time in which to make service, nor responded to [the court's] [November 30, 2021] show cause order." (Doc. 14).

No objections have been filed by any party to Judge Carlson's report and the time within which they were due has lapsed.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D. Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Since the report correctly states the procedural and factual background of this case, it shall not be repeated herein. See *also* McShane v. Agents of Int'l Monetary Fund, 2022 WL 601048 (M.D. Pa. Jan. 3, 2022), report and recommendation adopted, 2022 WL 287934 (M.D. Pa. Jan. 31, 2022).

As the report explains, McShane's failure to make timely and proper service of his original complaint on the remaining defendants, as directed by the court, requires the dismissal of this pleading. See Edwards v. Hillman,

849 F.App'x 23, 25 (3d Cir. 2021) (holding that “Rule 4(m) provides that a District Court must dismiss a complaint after notice to the plaintiff if service of the complaint is not made upon a defendant within 90 days after the filing”, and “[i]f plaintiff [does not demonstrate good cause for the failure to timely serve a defendant], the court may in its discretion decide whether to dismiss the case without prejudice or extend time for service.”) (citations omitted).

The court has considered the findings in Judge Carlson’s report and finds no clear error of law. Moreover, the court agrees with the sound reasoning which has led Judge Carlson to the conclusions in his report. As such, the report and recommendation will be adopted in its entirety as the opinion of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The report and recommendation of Judge Carlson, **(Doc. 24)**, is
ADOPTED IN ITS ENTIRETY AS THE RULING OF THE COURT.

(1) Plaintiff McShane’s original complaint, **(Doc. 1)**, is **DISMISSED** pursuant to [Rule 4\(m\)](#).

(2) Plaintiff McShane is deemed as proceeding only on his amended complaint, **(Doc. 21)**, and he is directed to timely serve his amended complaint and the summons, **(Doc. 23)**, upon the defendants.

(3) The Clerk of Court is directed to **REMAND THIS CASE** to Judge Carlson for further proceedings, including, assuring that McShane timely serves his amended complaint and the summons upon the defendants.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: July 8, 2022

21-1396-02